

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5425 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHISHIRVADAN C DESAI

Versus

MANAGING DIRECTOR, GUJ DAIRY DEVELOPMENT CORPN

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Appearance:

MR KV SHELAT for Petitioner

MR DG CHAUHAN for Respondent No. 1, 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/08/96

ORAL JUDGEMENT

Learned advocates Mr.K.V.Shelat appearing for the petitioner and Mr.D.G.Chauhan appearing for the respondentss are absent.

Petitioner was, at the relevant time, serving under the respondent-Corporation as a Senior Supervisor.

The petitioner by filing this petition has claimed deemed date of promotion to the post of Senior Supervisor with effect from the year 1969 and has claimed further promotion to the post of Senior Technical Officer and Shift Manager or Milk Distribution Officer with effect from 18-10-1976.

2. The petitioner was appointed on daily wages under the then Municipal Dairy on 11-8-1962. The petitioner possessed qualification of S.S.C.Examination. On 8-10-1964, the petitioner was selected and appointed as Supervisor in the Dairy, however, was reverted back as a daily wager in the year 1966. The petitioner was once again appointed as Supervisor and reverted back on 9-1-1968. The petitioner feeling aggrieved, raised an industrial dispute which was referred to the Tribunal and numbered as Reference (IT) No. 57 of 1976. Said reference was decided on 23-3-1979 in favour of the petitioner and by further modification dated 29-12-1980 it was directed that the petitioner be restored to the post of Supervisor with effect from 8-10-1964. He should be given the difference of wages and he would also be entitled to the seniority in the cadre of Supervisor. Pending above reference before the Tribunal, one Shree C.D.Patel was appointed as Senior Supervisor in the year 1969, the petitioner was promoted as Senior Supervisor on 16-7-1974. It is the claim of the petitioner that the petitioner was senior to Shree C.D.Patel and the petitioner therefore, is entitled to deemed promotion as Senior Supervisor with effect from 12-6-1969. He also claims that he should be further promoted to the post of Senior Technical Officer and Shift Manager or Milk Distribution Officer in the scale of Rs.450-750 with effect from 1976.

3. Claim made by the petitioner has been contested by the respondent-Dairy by filing its counter affidavit made by the Deputy General Manager (Personnel & Industrial Relation ). It is stated that in the year 1969, applications were invited for appointment to the post of Senior Supervisor. The petitioner and Shree C.D.Patel and few others had applied for the said post. The Selection Committee had held the interview and selected Shree C.D.Patel. In view of the said selection, Shree C.D.Patel was appointed as Senior Supervisor on 12-6-1969. Said appointment of Shree C.D.Patel was challenged by the petitioner before the learned Tribunal by filing Miscellaneous Application No. 7 of 1981. The said application was rejected by the learned Tribunal. Considering the above facts, it is apparent that Shree C.D.Patel was appointed by direct selection to the

post of Senior Supervisor on 12-6-1969. The petitioner also had applied for such selection, but had failed. The petitioner therefore, cannot be given promotion as Senior Supervisor with effect from 12-6-1969 as claimed by him.

4. In reply to the petitioner's claim for further promotion to the post of Senior Technical Officer and Shift Manager or Milk Distribution Officer, the respondent-Dairy has stated that in the year 1976 applications were invited for appointment to the post of Milk Distribution Officer and Senior Technical Officer and Shift Manager. The interviews were held on 20-10-1976. The petitioner however, was not eligible for appointment to the said post by direct selection, the petitioner, therefore, was not invited for interview. Considering the fact that the petitioner was not eligible for appointment to the post of Senior Technical Officer and Shift Manager or to that of Milk Distribution Officer, the petitioner cannot be given deemed date of promotion with effect from 18-10-1976 as claimed by him. Besides, the petitioner has not challenged the appointment made in the year 1976 at the relevant time and this petition claiming the benefit of deemed promotion after nearly 10 years is grossly belated.

5. It is further stated that the petitioner's case for promotion to the post of Senior Technical Officer and Shift Manager and Milk Distribution Officer was taken up for consideration by the Departmental Promotion Committee on 28-11-1987 and 14-3-1989. On both these occasions, considering the service records of the petitioner, the petitioner was not found suitable for such promotion. Promotion Committee, therefore, did not recommend the case of the petitioner for such promotion. In view of the aforesaid facts, the relief prayed for by the petitioner to consider his case for such promotion stands satisfied. The petitioner having been found unfit for promotion, the respondents cannot be directed to promote the petitioner as Senior Technical Officer and Shift Manager or as Milk Distribution Officer.

6. In above view of the matter, the petitioner cannot be granted any of the reliefs claimed by him. The petition is therefore, dismissed. Rule is discharged.

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